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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/629,933 08/01/00 TUTTLE

J 95-269.2

EXAMINER

WM01/0904

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ZIMMERMAN, B

ART UNIT

PAPER NUMBER

2635

DATE MAILED:

09/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/629,933

Applicant(s)

TUTTLE, JOHN R.

Examiner

Brian A Zimmerman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2001 and 26 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

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***Status of Application***

In response to the applicant's amendment received on 6/18/01 and 6/26/01. The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that claims 1-27 are unpatentable for the reasons set forth in this office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

1. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verster (5214410) and Landt (5030807) and Boyles (5602535).

Verster discloses mounting on each tagged object an RFID transceiver (20) and a portable transceiver unit having an antenna (12) but does not disclose adjusting performance parameters for reliable two-way communication range, and that the tag is a modulated back scatter transceiver.

In analogous art, Landt teaches a sensitivity control signal (38) and reception sensitivity (120 for the purpose of improving the error rate of the transmitting signal and the tag will back scatter modulate the signal from the interrogator.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the reception sensitivity of Landt in the tag system

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of Verster since such would improve the quality of the signal received thereby effecting the reliability range of the tag.

In an analogous art, Boyles suggests limiting the range of a transmitter receiver pair such that the distance between the transmitter and the receiver during operation is "only" slightly greater than closest distance between the transmitter and receiver pair to prevent the operation of other transponders, since they will be out of range.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-27 are rejected under the judicially created doctrine of double patenting over claims 1-5 of U. S. Patent No. 6097301 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming

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common subject matter, as follows: a method of adjusting two way communication range of an RFID system.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Response to Arguments***

Applicant's arguments filed 6/18/01 and 6/26/01 have been fully considered but they are not persuasive.

3. It is noted that Claims 2-4, 11-12, 16-17, 20, 21, 25 and 26 are broader than the other claims in that they do not include "only slightly" to describe the transmission range.

4. The applicant argues that Verster lacks any disclosure of adjusting any sort of communication range. The examiner agrees, and has not implied such.

5. The applicant argues that Landt does not show limiting the range to only slightly exceed the closest distance between the interrogator and the tagged object. The examiner has not applied Landt for teaching the narrow limitation of only slightly exceeding.

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6. The applicant argues that Landt's high and low sensitivity values are not adjustable. The applicant's interpretation of their claim(s) and how Landt is applied to such limitations is incorrect. First Landt shows selecting between two ranges using a high sensitivity and a low sensitivity. Therefore, the range is adjustable, i.e. High and Low. The claims merely require that the range be adjustable, not that the values of the range be adjustable.

7. The applicant argues that Landt does not teach adjusting a 2-way range instead of a 1-way range. The applicant's attempt at redefining the term 2-way range is confusing to say the least. The term 2-way range will be given its normally construed meaning as known in the art. The applicant intends to have the term be defined in a manner contrary to such well known meaning, and such is not permitted.

Landt teaches adjusting the operational range of one leg (direction) of the transponder system. The transponder system only works properly when there are two legs (2-way). Thus when the operational range one transmission leg of the system is reduced, the effective operational range of the other leg has also been reduced.

The applicant argues that if the 1-way range from Landt's interrogator to the tag is greater than the 1-way range from the tag to the interrogator, the 2-way range will remain constant. While this may be true, it is also true that when Landt adjusts the transmission range from the interrogator to the tag the 2-way range is also adjusted.

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8. The applicant argues that Boyles is not a transponder. While this is true, it is also true that Boyles does teach an incremental adjustment to a transmitter-receiver operational range, to prevent unauthorized communication or reception. Boyle's incremental adjustments are equivalent to the high/low adjustments of Landt.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 703-305-4796. The examiner can normally be reached on Off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 703-305-4704. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.



Brian A Zimmerman  
Primary Examiner  
Art Unit 2635

BaZ  
August 31, 2001